

**FILED****JUN 10 2004**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

**LARRY W. PROPER, CLERK  
CHARLESTON, SC**

ROSE C. RILEY, as Personal Representative of )  
the Estate of JOHN J. RILEY, )

Civil Action No: 04 1845 24

Plaintiffs, )

vs. )

**NOTICE OF REMOVAL**

CONSECO LIFE INSURANCE COMPANY & )  
WASHINGTON NATIONAL INSURANCE )  
COMPANY, )

Defendants. )

YOU WILL PLEASE TAKE NOTICE that the Defendants Conseco Life Insurance Company ("Conseco Life") and Washington National Insurance Company ("Washington National") in the above-entitled action hereby remove the above-captioned case into the United States District Court for the District of South Carolina, Aiken Division. This removal is proper on the following grounds:

1. A civil action has been commenced and is now pending in the Circuit Court for Aiken County, South Carolina, styled as above and denominated as Case Number 2004-CP-02-674.
2. Said action is one in which the United States District Court has original jurisdiction because the action involves a controversy which is wholly between citizens of different states in that, upon information and belief, the Plaintiff was at the commencement of said action, and still is, a citizen and resident of the State of South Carolina, and the Defendants, Conseco Life and Washington National, were at the commencement of said action, and still are, corporations duly organized and existing under the laws of the States of Indiana and Illinois, respectively, with their principal places of business in Carmel, Indiana.

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Notice of Removal and Notice of Filing Removal has been served upon the following counsel of record by placing the same in the United States mail, first class portage prepaid, addressed to the following as shown below this 10<sup>th</sup> day of June, 2004.

Leland M. Malchow, Esquire  
NIMMONS & MALCHOW, P.C.  
Post Office Box 460  
Augusta, GA 30903

Amberly H. Reutter  
Parker Poe Adams & Bernstein, LLP  
200 Meeting Street, Suite 301  
Charleston, SC 29401

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

ROSE C. RILEY, as Personal  
Representative of the Estate of  
JOHN J. RILEY.

*Plaintiff,*

vs.

CONSECO LIFE INSURANCE  
COMPANY & WASHINGTON  
NATIONAL INSURANCE COMPANY

*Defendant.*

SECOND CIRCUIT COURT

CIVIL ACTION

NO.: 04-CP-02-674

JURY TRIAL REQUESTED

**SUMMONS**

TO: WASHINGTON NATIONAL INSURANCE COMPANY c/o South Carolina  
Department of Insurance, 300 Arbor Lake Drive, Suite 1200, Columbia, South  
Carolina, 29223.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this  
action, of which a copy is herewith served upon you, and to serve a copy of your Answer to  
the said Complaint on attorney for the Plaintiff, Leland M. Malchow, at 460 Greene Street,  
Georgia 30901, within thirty (30) days after the service hereof, exclusive of the day of such  
service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in  
this action will apply to the Court for the relief demanded in this Complaint, and judgment  
by default will be rendered against you for the relief demanded in the Complaint.

  
Leland M. Malchow SC Bar Number: 064830  
Attorney for Plaintiff

Date: May 10, 2004  
Augusta, Georgia



COPY  
ORIGINAL FILED  
MAY 10 2004  
AIKEN COUNTY  
CLERK OF COURT

*mb*  
*4:40*

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

ROSE C. RILEY, as Personal  
Representative of the Estate of  
JOHN J. RILEY

*Plaintiff,*

vs.

CONSECO LIFE INSURANCE  
COMPANY & WASHINGTON  
NATIONAL INSURANCE COMPANY

*Defendants.*

SECOND CIRCUIT COURT FILED  
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MAY 10 2004  
AAC 4:40  
CLERK OF COURT

CIVIL ACTION

NO.: 04-CP-02-674

JURY TRIAL REQUESTED

**PLAINTIFF'S COMPLAINT FOR DAMAGES**

COMES NOW, the Plaintiff, ROSE C. RILEY, as Personal Representative of the Estate of JOHN J. RILEY, by and through her counsel of record, Leland M. Malchow, and files this, her Complaint for Damages against the Defendants, CONSECO LIFE INSURANCE COMPANY and WASHINGTON NATIONAL INSURANCE COMPANY, and shows to this HONORABLE COURT the following:

1.

That the Plaintiff, Rose C. Riley, was the wife of John J. Riley.

2.

That John J. Riley died on April 3, 2000.

3.

That on May 18, 2001, Rose C. Riley was named Personal Representative for the estate of John J. Riley in the Probate Court of Aiken County, South Carolina.

4.

That on or about April 22, 1994, policy number 1090143391 was issued to Tom P. Sherlock by Massachusetts General Life Insurance Company promising said Tom P. Sherlock with life insurance in the initial specified amount of fifty thousand dollars (\$50,000.00).

5.

That John J. Riley, brother-in-law of Tom P. Sherlock, was named as beneficiary of said policy number 1090143391.

6.

That Massachusetts General Life Insurance Company was acquired by Conseco Life Insurance Company.

7.

That Conseco Life Insurance Company is contractually and legally responsible for honoring Tom P. Sherlock's policy with Massachusetts General Life Insurance Company.

8.

That on or about May 11, 1995, policy number PL9514606 was issued to Tom P. Sherlock by Pioneer Life Insurance Company of Illinois promising to said Tom P. Sherlock life insurance in the initial specified amount of thirty-five thousand dollars (\$35,000.00).

9.

That John J. Riley, brother-in-law of Tom P. Sherlock, was named as beneficiary of said policy number PL9514606.

10.

That Pioneer Life Insurance Company of Illinois was acquired by Washington National Life Insurance Company.

11.

That Washington National Insurance Company is contractually and legally responsible for honoring Tom P. Sherlock's policy with Pioneer Life Insurance Company of Illinois.

12.

That Conseco Life Insurance Company and Washington National Insurance Company are subsidiaries of Conseco Services, LLC.

13.

That at all times pertinent hereto, Tom P. Sherlock was in full compliance with all terms and conditions required by the policy, and had paid all premiums as they became due.

14.

That Thomas P. Sherlock died March 13, 2001.

15.

That Rose C. Riley was appointed as Personal Representative of the Estate of John J. Riley on May 18, 2001, who was the beneficiary of Thomas P. Sherlock's policy, and has provided the Defendants with Notice of Loss, and duly complied with all of the

Defendants' claim procedures as required by the policy.

16.

That the Plaintiff has made a demand on the Defendants, but the Defendants continue to refuse to pay the Plaintiff's claim in bad faith. This refusal to pay said Claim within ninety (90) days subjects the Defendants to assessed attorney fees.

17.

That the Defendants' bad faith and unreasonable actions subject the Defendants to the Plaintiff's consequential damages as result of the Defendants' denial of the claim.

18.

That the Defendants' actions are willful and in reckless disregard of the Plaintiff's rights, and the Plaintiff should be awarded punitive damages against the Defendants.

WHEREFORE, the Plaintiff prays for judgement against the Defendants as follows:

- a. That the Plaintiff's claim be granted under the terms of the policy plus interest;
- b. All consequential damages incurred by the Plaintiff as a result of the Defendants' bad faith refusal to pay said claim;
- c. That Plaintiff receive assessed attorney's fees as a result of the Defendants' bad faith refusal to pay said claim;
- d. That the Plaintiff receive punitive damages as a result of the Defendants' bad faith refusal to pay said claim;